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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixth session

SUMMARY RECORD OF THE 15th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 4 December 1991, at 10 a.m.

Chairman: Mr. ALSTON

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The meeting was called to order at 10.20 a.m.

ORGANIZATION OF WORK (agenda item 4) (continued) (E/C.12/1991/WP.2)

1. Mr. SPARSIS supported the idea of drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Mr. Alston had given fresh impetus to the Committee's work with his discussion note (E/C.12/1991/WP.2), in which he highlighted the interdependence and indivisibility of human rights.

2. Mr. WIMER ZAMBRANO said that he had examined, with great interest, the arguments presented in favour of drafting an optional protocol and the comments, especially those of a legal nature, which had been drawn up in that regard. He had taken note, in particular, of the remarks made by Mr. Simma and Mr. Neneman about the difficulties involved in drafting such an instrument. However, agreement had already been reached within the Committee on a number of essential points, since the members of the Committee all endorsed the idea of drafting such a protocol which would make it possible to define more clearly the objectives of the Covenant, and also recognized, the need to take into account the limits of such a protocol and the legal problems which would arise in drafting it. Finally, it was clear from the discussion that careful attention would have to be paid to certain substantive and procedural questions to ensure that the elements to be included in the optional protocol were clearly defined.

3. Mr. FOFANA noted that the Committee had undoubtedly found Mr. Alston's discussion note informative and persuasive. However, it would be necessary to begin by explaining the unequal treatment which undermined the International Covenant on Economic, Social and Cultural Rights as compared with the International Covenant on Civil and Political Rights in order to show the origin of that inequality, the stages which would have to be gone through and the ends to be attained. The Committee would thus have a better appreciation of the difficulties to be overcome to ensure that the eventual optional protocol would have an impact. Furthermore, the advice given concerning caution, with regard to the content of the protocol should also be heeded. Mr. Fofano also thought that such an instrument had to reflect in a tangible manner the interdependent and indivisible nature of human rights and improve the efficiency of the Committee's work.

4. Mr. BADAWI also considered Mr. Alston's discussion note to be extremely useful and found the comments on the drafting of an optional protocol very apposite. Initially, the Committee should concentrate on deciding who would be empowered to present communications and to select the rights which might be invoked.

5. Mr. SIMMA, stressing that he was not opposed to drafting of an optional protocol, played the devil's advocate and emphasized the problems involved in such an undertaking. He observed that the developed countries might well object to rights recognized in ordinary law at the national level being considered as fundamental rights at the international level. He cited the case of Germany where many rights stated in the Covenant, such as the

right to housing, appeared in national legislation and could be invoked before the courts without, however, being considered to be fundamental rights that should be enshrined in the Constitution. He therefore wondered what the reaction of States parties which were developed countries would be to a proposal to establish, at the international level, a procedure which conferred on those rights a status they did not enjoy at the national level. The problem did not arise with regard to the Optional Protocol to the International Covenant on Civil and Political Rights since it covered rights as being fundamental rights in the constitution of States.

6. Mr. WIMER ZAMBRANO said that he assumed that there was no intention of including all economic, social and cultural rights in the optional protocol, but of selecting those which could be invoked before the Committee. If the protocol were to cover all the rights set forth in the Covenant, not only the developed countries but also developing countries would object to its preparation. The application of some rights was dependent on national income and one could not demand that all countries should allocate a proportion of their budget to the protection of all the rights included in the Covenant. He recalled that there were instances when the social programmes devised by international organizations could not be implemented due to the restrictions imposed by the World Bank or other financial institutions.

7. The CHAIRMAN, speaking as a member of the Committee and the author of the discussion note on the question of drafting an optional protocol (E/C.12/1991/WP.2), recalled that States parties had agreed that the Committee should study the application of fundamental rights. By allowing States parties to affirm that some rights, such as the right to housing, were not fundamental rights and had to be regulated by general administrative or legislative provisions, the status of the rights enshrined in the Covenant would be diminished. In his opinion, the objective of the optional protocol could be to encourage States to identify the economic, social and cultural rights which could be regarded as fundamental in the same way as civil and political rights. If any of the rights included in the Covenant could not be recognized as such, that could mean that one could not speak of indivisibility and interdependence of human rights. In any event, by considering the question of the optional protocol the Committee was able to have a better understanding of the questions before it.

8. Speaking as Chairman, he summed up the discussion and drew several conclusions. It seemed that the Committee wished to continue its consideration of the question of the optional protocol and had identified several important points to which it would have to revert. A working paper dealing with those points in more detail might, therefore, be drafted for the seventh session. Furthermore, it would be useful to consider setting up, during the seventh session, a working group to study the paper that had been prepared, to explore the question in depth and to report to the Committee in due course. In his opinion, it was first of all necessary to find an answer to the substantive issues which had been raised before further elaborating the idea of an optional protocol and corresponding proposal. If there was no objection, he would take it that the Committee approved those conclusions.

9. It was so decided.

Procedure to be followed in examining additional information requested from States parties

10. The CHAIRMAN informed the members of the Committee that the Permanent Mission of France to the United Nations had notified the Secretariat that it had been advised too late of the Committee's intention to consider at the current session, the additional information from the French Government (E/1989/5/Add.1) for a representative of France to be present and therefore requested the Committee to consider that information at its next session.

11. Mr. RATTRAY said that he had no objection to the postponement requested by France, but considered that the absence of representatives should not prevent the Committee from considering additional information, since under the procedure adopted by the Committee, the State party could communicate its observations on the Committee's comments at the time of the submission of its periodic report.

12. The CHAIRMAN noted that there was some confusion within the Committee with regard to the consideration of additional information, since the guidelines given by the pre-sessional Working Group and the Committee's decisions lent themselves to differing interpretations. At its fifth session, the Committee had taken decisions which were, however, very explicit (E/1991/23, paras. 275 and 276).

13. It might be desirable for the Committee to clarify its doctrine of "additional information" and allocate time during the final week of its work for that purpose. There were two kinds of additional information requested from States parties: firstly, clear figures in the form of a written communication on which conclusions would not be drawn by the Committee, or open a discussion with the State party concerned; secondly, information intended to supplement replies to written questions from the pre-sessional Working Group and oral questions from members of the Committee which were considered to be too succinct. Information of the second type had been requested, for example, from Afghanistan. Replying to the oral questions from the Committee, the representative of Afghanistan had assured the Committee that he would send, in written form and within a reasonable time, the information he was expecting from Kabul. In such a case, where substantive information was requested, the consideration of that information had to be seen as a stage in the consideration of the situation of the State party concerned. If it was agreed that States could delay the presentation of additional information then, eventually that they might not be represented at the meeting at which the Committee was scheduled to consider the information, the door was wide open to abuses. Such a step might lead to delays of two to three years in considering the situation of States parties; that was not acceptable. He proposed that, in the future, the Committee, in conclusions concerning a State party, should adopt one of two procedures: either it considered that the consideration of the situation of the State was completed and simply requested additional information on a few particular points from the State, or if it thought that the consideration was incomplete it informed the State concerned that it had decided to resume its consideration at its next session, and called on the State to supply the additional information it needed.

14. Mr. KONATE said that he believed that the matter had been settled the previous year, as the Committee had laid down the procedure to be followed in examining additional information submitted by a State party subsequent to its fourth session, as stated in its report (E/1990/23, para. 309). The Netherlands and France which were asking for an extension, had had the opportunity to study the report. If after having undertaken to provide the additional information, they stated that they could not be represented in the Committee when it considered the information, whilst they were not even obliged to, they were trying to have the procedure for consideration amended. The initiative for such a revision had to remain with the Committee. Mr. Konate therefore proposed that the Committee should either consider the additional information at the current session, regardless of the absence of the representatives of the State parties concerned, or inform the States that the consideration would take place at the following session.

15. The CHAIRMAN observed that the Committee had already given permission for the Netherlands to present its additional information at the same time as its periodic report, and was preparing to do the same for France.

16. Mr. KONATE stressed the need for the Committee to abide by its own decisions, even if that meant revising them at a later date. He said that if the letter authorizing the Netherlands to present its additional information at the same time as its next periodic report had already been written, a further letter was needed stating that the information would be considered by the Committee at its following session.

17. Mr. RATTRAY recalled that two decisions had been taken at the Committee's fourth session: firstly, additional information was considered at the session subsequent to that at which such information had been requested and the Committee communicated the observations, conclusions or general comments made by the Committee to the State party concerned; secondly, the State could communicate its observations on the Committee's comments at the time of the submission of its periodic report. The two decisions were coherent and it was understandable that, after having presented a fairly substantial report and having provided the additional information requested, State parties might not deem it essential to be represented during the consideration of the additional information, and if new questions were raised, preferred to wait and reply to them in their next periodic report. The same reasoning had been behind the guidelines issues by the pre-sessional Working Group to the States parties concerned.

18. The CHAIRMAN proposed that the Committee should uphold the decision taken at its fifth session. Firstly, it allowed States the possibility of being represented, if they wished, during consideration of their additional information; secondly, it allowed the Committee to choose when and how the State party was to submit new information. When additional information was considered, the Committee must, if necessary, be able to request a State party whose next periodic report would not be considered for two or three years, to provide new information in the meantime.

19. For the time being, he was ready to endorse Mr. Konate's proposal, even if, in the event, it meant that the Committee would have to reconsider the decision already taken with regard to the Netherlands. He therefore proposed

that the Committee should inform both the Netherlands and France that their additional information would be considered at the following session, even if those countries were not represented. He also proposed that henceforth, the Committee, as decided at its fifth session, should discuss the supplementary information submitted by a State party at the session immediately following its arrival, in the order in which it had been received (E/1991/23, para. 275).

20. It was so decided.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 9) (continued) (A/CONF.157/PC/13)

21. Mr. SIMMA, speaking in his capacity as the coordinator of the sessional Working Group responsible for the question of preparations for the World Conference on Human Rights, announced that the Committee would shortly have before it a draft paper on the preparations.

The meeting rose at 11.20 a.m.